

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9 of 2003

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR.JN BHATT

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

RANIBEN HASMUKHBHAI KUMBHAR

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 9 of 2003
MR ANIL S DAVE for Petitioner No. 1
MR KAMEN N SHUKLA for Petitioner No. 1
MS HARSHA DEVANI, AGP for Respondent No. 1-3

CORAM : ACTING CHIEF JUSTICE MR.JN BHATT

Date of decision: 28/05/2003

ORAL JUDGEMENT

#. In this petition, the petitioner-detenu has questioned the legality and validity of the detention order dated 8.12.2002 recorded by the Commissioner of Police, Rajkot city, Rajkot, the respondent No.1,

whereby, the petitioner came to be detained 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the PASA Act"), with a view to prevent her from acting, in any manner, prejudicial to the maintenance of public order in the Rajkot City 'A' Division Police Station area.

#. The petitioner was served with a copy of the impugned order of detention with a direction to treat her as Class-II detenu and the petitioner was also supplied with the grounds of detention along with documents running in 46 pages, interalia alleging that the petitioner was a "prohibition bootlegger" in terms of the definition as given under Section 2(b) of the PASA Act, and that she was carrying on anti social activities pertaining to illicit liquor business, and in the background of two cases registered for the offences punishable under the Bombay Prohibition Act, which was supported by the subjective satisfaction of the detaining authority, arrived at on the strength of statements of two privileged witnesses under Section 9(2) of the PASA Act, the impugned order of detention was made. In short, the detention order characterizing the petitioner as "prohibition bootlegger" came to be passed with a view to preventing her from acting in any manner prejudicial to the maintenance of public order.

#. Mr. Anil S. Dave, learned advocate appearing for the petitioner-detenu has raised first contention that the copies of the documents supplied to the petitioner are not legible. This ground is seriously controverted and traversed by the learned Assistant Government Pleader. It may be noted that such a contention has not been raised in the writ petition. It is raised for the first time at the time of hearing of this petition. Again, the contention is that some of the expressions of the contents in the bunch of 46 pages of documents are faintly stated. Even if it is so accepted at its face value, it cannot be said for a moment that the detenu was deprived of understanding the substance of the charge or the grounds. Apart from that, in fact, it cannot be said that the said documents are in any way in the form of illegible nature which would not bring home the meaning and substance of the grounds of detention. Therefore, the first contention is without any substance and must be rejected. Accordingly, it shall stand rejected.

#. The second ground which is urged is that there is delay in sending the representation of the detenu by the detaining authority to the State of Gujarat, as also there is delay in its consideration, which is, of course,

very much countenanced in the affidavit-in-reply filed by the detaining authority as well as by the confirming authority. This Court has extensively and dispassionately examined the entire record including the two affidavits, and has to plead its inability to accept the second contention also, being unacceptable as it receives no reinforcement from the record. Paragraph-13 of the affidavit-in-reply filed by Mr.V.V.Rabari, the Commissioner of Police, Rajkot City, Rajkot, is very much useful and fruitful to appreciate the second contention. The factual conspectus emerging from the record manifestly goes to show that the representation of the detenu dated 17.12.2002 came to be received by the detaining authority on 19.12.2002. The copies of all the documents as demanded by the detenu were also supplied on 20.12.2002, about which there is no dispute. The detention order having been passed against any of the co-accused and that the same having been relied for passing the detention order against the present petitioner is also denied. It is further clarified and enlightened in paragraph-4 of the affidavit of Mr.J.R.Rajput, Deputy Secretary to the Government of Gujarat, Home Department, Sachivalaya, Gandhinagar, dated 27th May, 2003, that the representation dated 17.12.2002 of the detenu was forwarded to the State Government by the detaining authority on 20.12.2002, and it was received by the Home Department on 26.12.2002, and the same was processed on file on 27.12.2002, and thereafter dealt with by the Section Officer. It is further averred that the two days thereafter, i.e. 28th and 29th December, 2002, were holidays being 4th Saturday and Sunday. After the file was cleared by the Section Officer on 30.12.2002, it was sent to the Under Secretary, who cleared it on 31.12.2002. Thereafter, the file, during the course of its process, reached the Additional Chief Secretary, Home Department, on 1.1.2003, and after due consideration, the representation came to be rejected by him on 1.1.2003 itself. Not only that, a letter communicating the said decision was also sent on 1.1.2003, which was communicated to the petitioner through jail authority. In view of the aforesaid factual profile borne out from the record, including the affidavits of the respondents No.1 and 2, there is no doubt in the mind of this Court that the second ground is also meritless and deserves to be thrown overboard.

#. In support of the submissions, reliance is placed by the learned advocate for the petitioner on the decision of this Court reported in 1994(2) GLH (U.J.) 10 in the case of Urmilaben Navnitlal Gandhi v. Commissioner of Police, which, in the opinion of the Court, is not

applicable to the facts of the present case. On the other hand, the facts which constitute from the record of the case would clearly attract the proposition of law so beautifully expounded by their Lordships in M.Mohammad Sultan v. Joint Secretary to the Government of India, reported in AIR 1990 SC 2222. It is very clear from the factual matrix as well as the proposition of law laid down in M.Mohammad's case (supra) that as such, there is no delay and even if it is treated to be delay, it has been explained. In the said case, the delay was of six days which came to be explained, and therefore, the detention order against the detenu came to be confirmed.

#. In view of the aforesaid facts and circumstances, the proposition of law, and the submissions advanced before this Court on these two aspects, this Court has no slightest of hesitation in coming to the conclusion that the instant writ petition, by invocation of Article 226 of the Constitution of India, is without any substance and merit, and therefore, it deserves only one legal fate and that is of rejection. Accordingly, the petition shall stand rejected. Rule shall stand discharged without any order as to costs.

(J.N.Bhatt, Acting C.J.)
(sunil)